

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1)	TAMMY COVINGTON, and)	
(2)	JEFFREY COVINGTON)	
)	
	PLAINTIFFS,)	Case No. CIV-19-718-PRW
)	(formerly Oklahoma County
vs.)	Case No. CJ-2019-3967)
)	
(1)	CSAA FIRE AND CASUALTY)	
	INSURANCE, d/b/a AAA FIRE AND)	
	CASUALTY INSURANCE COMPANY,)	
	INC.)	
)	
	DEFENDANT.)	

SUPPLEMENT TO PLAINTIFFS'
RESPONSE AND OBJECTION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

COMES NOW the Plaintiffs, Tammy and Jeffrey Covington, and hereby submit a supplement to their Response and Objection to Defendant's Motion for Summary Judgment [Doc # 24].

1. Through inadvertence and mistake, Plaintiffs' Response mistakenly cited erroneous sections of the policy, some of which were replaced by endorsement. The correct and applicable section is Section I, which applies to Perils. The incorrect policy sections were also added as exhibit 8. Exhibit 8 should be replaced entirely by Attachment 1 to this Supplement.

2. The applicable language is substantially the same as the language cited and thus this supplement does not alter the substance of the response but seeks to be clear and candid with the Court.

3. The incorrect language occurs on pages on 15 and 16 of Plaintiffs' Brief.

4. The correct language states as follows:

SECTION I - PERILS INSURED AGAINST

We insure against risk of direct physical loss to property described in Coverages A, B and C.

We do not insure, however, for loss: ...

Under Coverages A, B and C: CSAA_Covington 0344

1. Excluded under Section I - Exclusions;

2. Caused by:

d. **Constant or repeated seepage or leakage of "water" or the presence or condensation of humidity, [is excluded] . . . unless** such seepage or leakage of "water" or the presence or condensation of humidity, moisture or vapor is **unknown** to all "insureds" and is **hidden . . . beneath the floors....**

CSAA_COVINGTON 389 (Emphasis Added)

e. Any of the following: CSAA_Covington 0345

....

Exception to 2.e.

.... we cover loss to property covered under Coverage A, B, or C resulting from an accidental discharge or overflow of water or steam from within a:

(ii) Plumbing, [or]...air conditioning...appliance on the “residence premises”. CSAA_Covington 0346

As stated more thoroughly in Plaintiffs’ original brief, the policy language excluding constant seepage has two clearly defined exceptions. The first is when the water is hidden within the floors. The Sharp report indicated that the Plaintiffs were unaware of the seepage until they came home to discover the leak. Plaintiffs took steps to clean up the water and any water not cleaned up was hidden within the floors. Plaintiffs have and continue to maintain that a single event of overflow occurred, that any residual or remaining water or moisture was caused by the single event and hidden and unknown to Plaintiffs.

Further as indicated above, the exclusion does not apply if caused by the accidental discharge or overflow of a plumbing or air conditioning appliance. Any dispute as to the origin of the leak, the length of time of the leak, the exact point when Plaintiffs became aware of the leak, if the AC unit continued to leak after the overflow was observed and remedied by Plaintiffs, or if it was still actively leaking are all fact issues which precludes summary judgment.

WHEREFORE, Plaintiffs hereby submit this supplement to their Response and Objection to Defendant’s Motion for Summary Judgment.

Respectfully Submitted,

s/ Erica R. Mackey
Douglas J. Shelton, OBA #8159
Erica R. Mackey, OBA #32057
dshelton@sheltonlawok.com
emackey@sheltonlawok.com

SHELTON WALKLEY MACKEY
7701 S. Western Ave., Suite 201
Oklahoma City, OK 73139
(405) 605-8800 - office
(405) 601-0677 - Facsimile
*ATTORNEYS FOR PLAINTIFFS,
TAMMY COVINGTON AND JEFFREY COVINGTON*

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Gerard F. Pignato, OBA #11473
Matthew C. Kane, OBA #19502
Joshua K. Hefner, OBA #30870
RYAN WHALEY COLDIRON JANTZEN
PETERS & WEBBER PLLC
400 North Walnut Ave.
Oklahoma City, OK 73104
jerry@ryanwhaley.com
mkane@ryanwhaley.com
jhefner@ryanwhaley.com
ATTORNEYS FOR DEFENDANT

/s/ Erica R. Mackey
Erica R. Mackey